

Notice of Allowability

Application No.

10/802,650

Examiner

Anthony Weier

Applicant(s)

TABATA, YUTAKA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the transmittal filed 7/20/07.
2. ☒ The allowed claim(s) is/are 1-11 and 21.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☒ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Delete non-elected claims 12-20.

DRAWINGS

2. The following changes to the drawings are required by the examiner:

Applicant must resubmit Figures 1B and 1C. It should be noted that it is difficult, if not impossible, to read the "Figure 1B" and "Figure 1C" labeling for the respective copies of each figure presently in the application.

In order to avoid abandonment of the application, applicant must make these above drawing changes.

3. The following is an examiner's statement of reasons for allowance:

The prior art of record neither discloses nor suggests processing a nut wherein the shell has been removed and same is subjected to low temperature to induce formation of cracks and subsequently separating the nut into a plurality of nut fragments without mechanical compression of the nut as well as powdering of same. In particular, Stahmann and EP 1145653 both teach a cryogenic treatment of the nut with shell wherein said treatment is conducted such that only the shell is intended to fragment or become brittle. The claims require that the nut meat (nut in the absence of shell) is

Art Unit: 1761

treated in the absence of the shell and that cracks are formed in the nut meat wherein the nut fragments formed are then separated. There is no motivation as to why one would modify Stahmann and EP 1145653 to only treat the nut meat for fragmentation as both references teach away from same by maintaining the fragmenting and removal of the shell by such treatment and avoidance of fragmentation of the inner nut meat. JP 57-177683 requires that the peanut treated not be crushed into a powder. It should be noted that the instant claims require that said nut not be separated into fragments by mechanical compression and that a powder is not to be formed. It would not have been obvious to one having ordinary skill in the art at the time of the invention to have modified the nut treatment process of JP 57-177683 as preparing fragments that are not in a powder form as JP 57-177683 teaches away from doing same by advocating powder formation. Likewise, JP 57-102166 requires treatment of nut material using mechanical compression and preparation of a powder which are both contrary to process recited in the instant claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

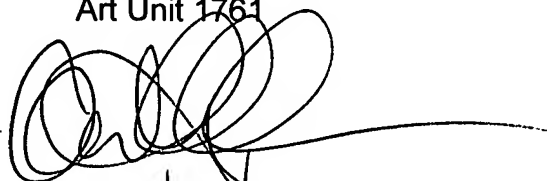
Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
September 20, 2007

Anthony Weier
Primary Examiner
Art Unit 1761



9/20/07